



# ILLINOIS JUDICIAL BRANCH

## Bench Card: Civil Fee and Criminal Assessment Waivers

### Before Evaluating Applications

- If an applicant receives a public benefit or is income eligible, a judge **shall** grant a waiver pursuant to statute.
- A judge has the **discretion** to:
  - hold an in-person hearing and/or order the applicant to produce supporting documents;
  - allow deferred or installment payments; and
  - grant a waiver based on substantial hardship.
- All waiver applications should be reviewed independent of the underlying pleading or charge.

### 1. Determining Indigency – Means-Based Public Benefits

An applicant who receives one or more means-based public benefit automatically qualifies for a full waiver. All these benefits require rigorous screening and regular recertification. Most programs have asset caps, but allow recipients to own one home and one car. Many public benefits recipients work or own property but still live in or near poverty due to low wages, irregular work schedules, household dependents, or declining property values. *If an applicant establishes they receive a qualifying public benefit, analysis is complete and the full waiver shall be granted.*

For more information on the specific criteria and screening procedures for the individual benefit programs, please visit <https://www.ssa.gov/ssi/> or <http://www.dhs.state.il.us/page.aspx>.

### How Does a Judge Determine Whether an Applicant is Indigent and Qualifies for a Waiver?

There are three ways an applicant qualifies for a FULL waiver:

- 1. Means-Based Public Benefit:** Applicant receives assistance from one or more of the following governmental public benefits programs:
  - Supplemental Security Income (SSI) (*Not* Social Security Retirement, Disability, or Survivors benefit)
  - Aid to the Aged, Blind and Disabled (AABD)
  - Temporary Assistance for Needy Families (TANF)
  - Supplemental Nutrition Assistance Program (SNAP) (formerly Food Stamps)
  - General Assistance (GA), Transitional Assistance, or State Children and Family Assistance

*NOTE: receiving another type of public benefit that is not on this list means that the person doesn't automatically qualify for a full waiver under statute, but may still qualify based on hardship or income level.*

- 2. Substantial Hardship:** Applicant demonstrates that paying court fees would pose a substantial hardship.
- 3. Household Income:** Applicant's available household income is at or below a percentage of the Federal Poverty Level (FPL): 125% in civil cases or 200% in criminal cases for a full waiver.

*NOTE: for both criminal and civil cases, parties are considered indigent and the parties' fees/assessments can be waived if a legal services provider certifies that the person is eligible to receive those free legal services.*

### Public Benefits as a Proxy for Indigency

#### Means-based public benefits programs are:

- Contingent on proof of income, assets, identity, legal status, and other eligibility criteria.
- Recertified on a regular basis.
- Verified by experienced agencies with access to federal databases that can check bank accounts, employment history, and immigration records.
- Proven to have minimal levels of fraud.

#### Relying on these programs will:

- Reduce the administrative burden on judges and staff.
- Increase efficiency in processing waiver applications.
- Improve statewide consistency of application handling.
- Avoid the appearance of bias by adhering to objective criteria.
- Reduce redundancy for applicants who have already gone through background and income screening.
- Avoid duplication of work by multiple government agencies.

### 2. Determining Indigency-Substantial Hardship

*If an applicant does not receive a public benefit or their income is higher than the stated FPL percentage, they can still qualify for a waiver. A judge may exercise discretion and grant a full waiver to an applicant who can demonstrate that paying the court fees or assessments would constitute a substantial hardship to the individual or the family. Factors to consider, in addition to public benefits and income, are the applicant's monthly expenses and supporting documents showing the fee or assessment would be a substantial hardship.*

### Applicants must use the Statewide Standardized Forms

- Forms suites include:
  - Getting Started overview
  - Instructions for asking for a waiver
  - Application for applicants to fill out
  - Order for judges to complete
- One suite for civil cases and another for criminal cases
- Available at <http://illinoiscourts.gov/Forms/approved/Circuit.asp>

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### 3. Determining Indigency – Household Income

If an applicant does not receive a means-based public benefit, the thing to look at before substantial hardship is income. The most common measure of indigency is the Federal Poverty Level (FPL), the measure set and used by the US government. The FPL is updated each year and applies uniformly throughout the US without adjustment for variation in cost of living. For more information on the federal poverty level, visit <https://aspe.hhs.gov/poverty-guidelines>. 100% of the 2020 annual FPL for one person is \$12,760 and \$26,200 for a family of four, and the monthly FPL is \$1,063 for one person and \$2,183 for a family of four.

**MONTHLY Federal Poverty Level**

#	125% FPL	150% FPL	175% FPL	200% FPL	250% FPL	300% FPL	400% FPL
1	\$1,329	1,595	1,861	2,127	2,658	3,190	4,253
2	\$1,796	2,155	2,514	2,873	3,592	4,310	5,747
3	\$2,263	2,715	3,168	3,620	4,525	5,430	7,240
4	\$2,729	3,275	3,821	4,367	5,458	6,550	8,733
5	\$3,196	3,835	4,474	5,113	6,392	7,670	10,227
6	\$3,663	4,395	5,128	5,860	7,325	8,790	11,720

<https://aspe.hhs.gov/poverty-guidelines> (link to percentage chart on right side)- 2020

### Full or Partial Waivers

If an applicant's available household income is 125% or less of FPL (civil cases) or 200% or less of FPL (criminal cases), judges SHALL grant them full waivers. If their income falls in the ranges listed below, judges SHALL grant the corresponding partial waiver. Use these charts as a way to see all bases for full or partial waivers:

#### Civil Fee Waiver 735 ILCS 5/5-105

<b>100% Waiver</b>	Receives a <b>means-based public benefit</b> (regardless of income)
<b>100% Waiver</b>	Payment would result in <b>substantial hardship</b> (regardless of income)
<b>100% Waiver</b>	Available income <b>125% FPL</b> or less
<b>75% Waiver</b>	Available income greater than <b>125%</b> but does not exceed <b>150% FPL</b>
<b>50% Waiver</b>	Available income greater than <b>150%</b> but does not exceed <b>175% FPL</b>
<b>25% Waiver</b>	Available income greater than <b>175%</b> but does not exceed <b>200% FPL</b>

#### Criminal Assessment Waiver 725 ILCS 5/124A-20

<b>100% Waiver</b>	Receives a <b>means-based public benefit</b> (regardless of income)
<b>100% Waiver</b>	Payment would result in <b>substantial hardship</b> (regardless of income)
<b>100% Waiver</b>	Available income <b>200% FPL</b> or less
<b>75% Waiver</b>	Available income greater than <b>200%</b> but does not exceed <b>250% FPL</b>
<b>50% Waiver</b>	Available income greater than <b>250%</b> but does not exceed <b>300% FPL</b>
<b>25% Waiver</b>	Available income greater than <b>300%</b> but does not exceed <b>400% FPL</b>

### Granting or Denying Applications

- A judge must specify a reason in the order if the waiver application is denied.
- Rely on the objective criteria to review waiver applications to avoid potential influence or appearance of bias.
- Do not make assumptions based on an applicant's appearance, clothing, possessions, or demeanor.
- Many applicants have disabilities, both visible and invisible, that can interfere with their ability to work.
- Having a job is not an automatic disqualifier. A federal minimum wage employee with one minor child can work 40 hours a week and still fall under the federal poverty level.
- Having an attorney is not an automatic disqualifier. Some pro bono and limited scope attorneys represent clients in or near poverty. Other attorneys work on contingency or are paid by someone other than the applicant.
- Owning a home is not an automatic disqualifier. Many home owners are "underwater." Even those with equity in the home may live in poverty since it is not a fungible asset.
- There are no residency requirements for waiver applications.

#### For additional information, please contact:

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